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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WALTER PENN,

Plaintiff

v.

BEN E. VARNER, ET AL.,

Defendants

: CIVIL ACTION NO. 1:CV-00-0771

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(Judge Rambo)

FILED
HARRISBURG, PA

AUG 2 2000

O R D E R

MARY E. DIANDREA, CLERK
Per JES Deputy Clerk

Background

This is a civil rights action filed under 42 U.S.C. § 1983 by Walter Penn, an inmate currently confined at the State Correctional Institution, Dallas, Pennsylvania.

Defendants filed a motion to dismiss the complaint and a brief in support thereof on July 3, 2000. Although a brief in opposition to the motion is now long overdue, Plaintiff has neither made an appropriate filing nor requested an extension of time in which to do so. Therefore, the motion to dismiss may be deemed unopposed.¹ M.D. Pa. Local Rule 7.6.


1. By order dated May 2, 2000, this court directed the parties' attention to the Local Rules of Court. The order referred specifically to an opposing party's duty to file a brief in opposition to a motion within fifteen (15) days after service of the movant's brief. See M.D. Pa. Local Rule 7.6.

Generally, a dispositive motion may not be granted merely because it is unopposed. Because Local Rules of Court must be "construed and applied in a manner consistent with the Federal Rules of Civil Procedure," Anchorage Assoc. v. Virgin Islands Board of Tax Review, 922 F.2d 168, 174 (3d Cir. 1990), the disposition of an unopposed motion ordinarily requires a merits analysis. The Court of Appeals for the Third Circuit has stated, however, that Local Rule 7.6 can be applied to grant a motion to dismiss without analysis of the complaint's sufficiency "if a party fails to comply with the rule after a specific direction to comply from the court." Stackhouse v. Mazurkiewicz, 951 F.2d 29, 30 (3d Cir. 1991).

Penn's failure either to file a brief in opposition to Defendants' motion to dismiss or to otherwise communicate with the court indicates that he may have lost interest in prosecuting this lawsuit. Consequently, the court will grant the motion without a merits analysis and dismiss the case under the authority of Stackhouse if Plaintiff fails to file a brief in opposition to the motion or otherwise communicate with the court within twenty (20) days of the date of this order.

Accordingly, IT IS HEREBY ORDERED THAT:

Plaintiff is directed to file a brief in opposition to Defendants' motion to dismiss within twenty (20) days of the date of this order or the motion will be deemed unopposed and granted without a merits analysis. See M.D. Pa. Local Rule 7.6. Stackhouse v. Mazurkiewicz, 951 F.2d 29, 30 (3d Cir. 1991).



SYLVIA H. RAMBO
United States District Judge

Dated: August 2, 2000.

SR:jvw

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

August 2, 2000

Re: 1:00-cv-00771 Penn v. Varner

True and correct copies of the attached were mailed by the clerk
to the following:

Walter Penn
SCI-D
SCI at Dallas
AP-9156
Drawer K - Follies Rd.
Dallas, PA 18612-0286

Maryanne M. Lewis, Esq.
Office of the Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120

cc:	
Judge	()
Magistrate Judge	()
U.S. Marshal	()
Probation	()
U.S. Attorney	()
Atty. for Deft.	()
Defendant	()
Warden	()
Bureau of Prisons	()
Ct Reporter	()
Ctroom Deputy	()
Orig-Security	()
Federal Public Defender	()
Summons Issued	() with N/C attached to complt. and served by: U.S. Marshal () Pltf's Attorney ()
Standard Order 93-5	()
Order to Show Cause	() with Petition attached & mailed certified mail to: US Atty Gen () PA Atty Gen () DA of County () Respondents ()
Bankruptcy Court	()
Other _____	()

MARY E. D'ANDREA, Clerk

DATE:

8/2/00

BY:

BTB
Deputy Clerk